

SMALL BUSINESS DEVELOPMENT CORPORATION ACT 1983.

(No. 46 of 1983.)

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**SMALL BUSINESS
DEVELOPMENT
CORPORATION.**

No. 46 of 1983.

AN ACT to make provision for the establishment of a Small Business Development Corporation to encourage, promote, facilitate and assist the establishment, development, and carrying on of small business in the State and for incidental and other purposes.

[Assented to 5 December 1983.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Small Business Development Corporation Act 1983*. Short title.

Commence-
ment.

2. This Act shall come into operation on a date to be fixed by proclamation.

Interpreta-
tion.

3. (1) In this Act, unless the contrary intention appears—

“appointed member” means a person appointed by the Governor pursuant to paragraph (a) or (b) of section 5 (1) to be a member of the Corporation;

“Chairman” means the person appointed under section 5 (1) to be the Chairman of the Corporation and includes a person acting in the office of Chairman;

“Corporation” means the Small Business Development Corporation established under section 4 (1);

“Managing Director” means the Managing Director of the Corporation appointed under section 12;

“member” means a member of the Corporation appointed by or under section 5;

“paragraph” means a paragraph of the section or subsection in which the term appears;

“small business” means a business undertaking—

(a) which is wholly owned and operated by an individual person or by individual persons in partnership or by a proprietary company within the meaning of the Companies (Western Australia) Code and which—

(i) has a relatively small share of the market in which it competes;

- (ii) is managed personally by the owner or owners or directors, as the case requires; and
 - (iii) is not a subsidiary of, or does not form part of, a larger business or enterprise; or
- (b) which is declared by the Governor by Order in Council pursuant to subsection (2) to be a small business for the purposes of this Act;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term appears.

(2) The Governor may, by Order in Council published in the *Government Gazette*, declare a business undertaking to be a small business for the purposes of this Act and by subsequent Order in Council so published vary or revoke that declaration.

4. (1) For the purposes of this Act, there shall be established a body corporate by the name of the “Small Business Development Corporation”. ^{The Corporation.}

(2) Under its corporate name the Corporation—

- (a) has perpetual succession and a common seal;
- (b) may acquire, hold and dispose of real and personal property;
- (c) may sue and be sued in any court;
- (d) shall have and may exercise such powers, and shall perform such functions and duties, as are conferred or imposed upon it by or under this Act; and

(e) subject to this Act, is capable of doing and suffering all that bodies corporate may do and suffer.

(3) Where in any judicial proceedings, whether under this Act or not, a document is produced bearing a seal purporting to be the common seal of the Corporation the court or tribunal before which those proceedings are brought shall in the absence of proof to the contrary presume that—

(a) the seal is the common seal of the Corporation; and

(b) the seal was duly affixed.

(4) Regulations made under this Act may make provision as to the use of the common seal of the Corporation in the State and elsewhere.

Composition
of
Corporation.

5. (1) The Corporation shall consist of—

(a) one person appointed by the Governor as a member and Chairman of the Corporation;

(b) 4 persons, of whom one shall be a person representative of small business in the country areas of the State, appointed by the Governor as members of the Corporation; and

(c) the Managing Director *ex officio*.

(2) Subject to this Act each appointed member shall hold office for such period not exceeding 3 years as is specified in the instrument of his appointment, but is eligible for re-appointment.

(3) The Minister may grant leave of absence to an appointed member on such terms and conditions as the Minister determines.

(4) The Governor may terminate the appointment of an appointed member for inability, inefficiency or misbehaviour.

(5) If an appointed member—

- (a) is or becomes an undischarged bankrupt or person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) has his appointment terminated by the Governor, pursuant to subsection (4);
- (c) is absent, except on leave duly granted by the Minister, from 3 consecutive meetings of the Corporation of which he has had notice; or
- (d) resigns his office by written notice addressed to the Minister,

the office of that member becomes vacant.

(6) The Governor may fill any vacancies in the office of member.

(7) Any person appointed under subsection (6) shall be entitled to hold office for the unexpired portion of the term of his predecessor.

6. (1) Where—

Acting
members.

- (a) an appointed member is absent or temporarily incapable of fulfilling the duties of a member; or
- (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint a person to act in the place of that appointed member during that absence or incapability, or until the vacancy is filled, as the case requires, and a person so appointed has, while the appointment subsists, all the duties, powers and entitlements of, and the protection given to, the member in whose place the person is appointed to act.

(2) The Minister, in the absence or incapacity of the Chairman or if that office is vacant, may appoint a person to act as Chairman and that person, while the appointment subsists, has all the functions, powers and duties of the Chairman.

(3) The Managing Director may nominate, in writing delivered to the Chairman, an employee of the Corporation to represent him at any meeting at which he is unable to attend, and while so attending the person so nominated has the functions, powers and duties as a member, of the Managing Director.

(4) The appointment of a person as an acting member or as acting Chairman, or the nomination of a person to represent the Managing Director, may be terminated at any time by the Minister.

Remuneration of members.

7. (1) A member, other than a member who is an officer in the Public Service of the State or employed by a State instrumentality, shall be paid such remuneration and allowances as the Minister from time to time on the recommendation of the Public Service Board determines.

(2) Acceptance of, or acting in, the office of member shall not of itself render the provisions of the Public Service Act 1978 or any other Act applying to persons as officers of the Public Service or employees of a State instrumentality applicable to that member or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of, or acting in, that office.

Proceedings of the Corporation.

8. (1) The Corporation shall hold its meetings at such place on such days and at such intervals as the Corporation shall from time to time determine.

(2) At any meeting of the Corporation 4 members constitute a quorum.

(3) At any meeting of the Corporation the Chairman, or in his absence a person appointed as acting Chairman, presides but where both are absent from a meeting of the Corporation the members may appoint one of their number to preside at that meeting.

(4) At any meeting of the Corporation—

(a) each member present is entitled to a deliberative vote; and

(b) where the votes cast on any question are equally divided, the question shall be deemed lost.

(5) The Corporation shall cause accurate minutes to be kept of the proceedings at its meetings.

(6) To the extent that it is not prescribed, the Corporation may determine its own procedure.

9. No proceeding or act of the Corporation shall (if there is a quorum) be invalidated or illegal in consequence only of there being any vacancy in the number of members at the time of that proceeding or act, or in consequence of there being some defect in the appointment of a person purporting to be a member.

Matters not to be invalidated by vacancies, or defects in appointment.

10. A person who is or has been a member or acting member of the Corporation is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Corporation by this Act.

Liability of members.

11. (1) Subject to the general direction and control of the Minister the Corporation shall administer this Act.

Powers and functions of the Corporation.

(2) The functions of the Corporation are—

- (a) to take such steps and do such acts and things as are necessary for the promotion and development of small business and to provide assistance for the establishment, development and carrying on of small business throughout the State;
- (b) of its own motion, to make representations, to tender advice and make reports to the Minister on any matter or thing relating to, or affecting small business;
- (c) at the request of the Minister to investigate any matter affecting small business referred to it by the Minister and to report to the Minister thereon;
- (d) to establish and maintain liaison between associations or groups of people representing or servicing small business and the Government of the State;
- (e) to investigate the effect upon small business of policies of Governments, Acts of Parliament (whether of the Commonwealth or a State or Territory of the Commonwealth) or subordinate legislation made thereunder and to advise and keep the Minister informed thereon;
- (f) to provide to any person, association or group of people an advisory and administrative service for, or in connection with the establishment, carrying on, expansion and development of any small business;
- (g) to arrange and co-ordinate training, educational and skill development programmes for small business;

- (h) to establish and maintain an information centre containing a comprehensive selection of literature, manuals, brochures, audio visual material, technical data, business profiles and the like;
 - (i) to carry out research and to publish and distribute information, technical data and the like for the guidance of small business;
 - (j) to engage the services of suitable consultants where appropriate to provide surveys, technical data, statistics, professional opinions or other information for the purposes of this Act;
 - (k) to counsel small business on the availability of finance and the means of obtaining financial assistance;
 - (l) to promote and co-ordinate the provision of venture capital to small business;
 - (m) to recommend to the Minister ways and means by which incentives and financial assistance, including guarantees, may be provided for small business; and
 - (n) to promote public awareness of the importance of matters relating to the activities of small business and to inform the public concerning the value of sound business practice.
- (3) The Corporation has power to do all things necessary or convenient for or in connection with the performance of its functions and, without limiting the generality of the foregoing, may—
- (a) raise fees or charges with respect to the provision of services or the performance of any work by, or on behalf of, the Corporation;

- (b) own, lease, rent or otherwise acquire suitable premises or accommodation for its staff, records and facilities; and
- (c) open and maintain an account at a bank approved by the Treasurer.

(4) The Minister may from time to time give directions to the Corporation with respect to its functions, powers and duties, either generally or with respect to a particular matter, and the Corporation shall give effect to those directions.

Managing
Director.

12. (1) A person shall be appointed to the office of Managing Director of the Corporation.

(2) The Managing Director shall be appointed by the Governor for a term not exceeding 5 years and shall be eligible for re-appointment.

(3) The conditions of service of the Managing Director shall be such as the Governor determines.

(4) Subject to the Salaries and Allowances Act 1975, the Managing Director shall be paid such remuneration and allowances as are from time to time determined by the Governor.

(5) A person appointed to the office of Managing Director may, at any time, be removed from office by the Governor—

- (a) for disability;
- (b) if he becomes an undischarged bankrupt or person whose property is subject to an order of arrangement under the laws relating to bankruptcy;
- (c) for neglect of duty; or
- (d) for misconduct.

(6) The Managing Director may at any time resign his office by writing under his hand addressed to the Corporation.

13. The Managing Director shall, under the Corporation, administer the day to day operations of the Corporation and generally has and may exercise the powers and shall perform the functions and duties conferred or imposed upon him by or under this Act.

Powers, functions and duties of Managing Director.

14. (1) Where—

Acting appointments.

(a) the Managing Director is absent or temporarily incapable of fulfilling his duties as Managing Director; or

(b) the office of Managing Director is vacant, the Minister may appoint an employee of the Corporation to act in the office of Managing Director during that absence or incapacity or until the vacancy is filled, as the case requires, and that person has, while his appointment subsists all the powers, functions and duties of the Managing Director.

(2) Any reference in this Act to the Managing Director shall be construed as including a reference to a person appointed by the Minister pursuant to subsection (1) to act in the office of Managing Director.

15. (1) Subject to this Act, the Corporation may, from time to time, employ such persons as it considers necessary to enable the Corporation to carry out its functions.

Employees of the Corporation.

(2) Persons employed under subsection (1) may be employed on a full time or part time basis.

(3) Subject to any relevant award under the Industrial Arbitration Act 1979, the Corporation may determine the remuneration and other terms and conditions of service of its employees.

(4) The Public Service Act 1978 does not apply to or in relation to an employee of the Corporation.

Professional or technical assistance.

16. The Corporation may engage under contract for services such professional and technical or other assistance as may be necessary to enable the Corporation to perform effectively its functions under this Act.

Use of staff and facilities of Departments and instrumentalities.

17. The Corporation may by arrangement with the Minister concerned and on such terms and conditions as may be mutually arranged with that Minister and with the Public Service Board, make use, either full time or part time, of—

- (a) the services of any officer or employee employed in the Public Service of the State or in a State instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a Department of the Public Service of the State or of a State instrumentality.

Secrecy.

18. (1) This section applies to every person who is or has been a member, is acting or has acted in the office of Managing Director or a member, is or has been an employee of the Corporation or is rendering or has rendered services to the Corporation under section 16 or 17.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance of a function or duty under or in connection with this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act; or
- (b) produce to any person any document relating to the affairs of another person furnished for the purposes of this Act.

(3) A person to whom this section applies shall not contravene or fail to comply with a provision of this section.

Penalty: \$2 500.

19. (1) The funds available for the purpose of enabling the Corporation to perform its functions under this Act consist of— ^{Funds.}

- (a) moneys from time to time appropriated by Parliament for the purposes of this Act;
- (b) all moneys received by the Corporation for services provided under the authority of this Act;
- (c) any other moneys made available for the purposes of this Act.

(2) The funds referred to in subsection (1) shall be paid into, and be placed to the credit of, an account—

- (a) at the Treasury; or
- (b) at a bank within the State approved by the Treasurer,

to be called the “Small Business Development Corporation Account”.

(3) All expenditure incurred by the Corporation for the purpose of giving effect to this Act shall be paid from the Small Business Development Corporation Account.

(4) Moneys standing to the credit of the Small Business Development Corporation Account shall be applied by the Corporation only for the purposes of this Act.

Power to invest.

20. Any money standing to the credit of the Small Business Development Corporation Account which is not immediately required for the purposes of this Act may, with the approval of the Treasurer and subject to the Public Moneys Investment Act 1961, be invested by the Corporation.

Annual estimates of receipts and payments.

21. The Corporation shall cause annual estimates of the receipts and payments of the Corporation relating to its administration of this Act to be prepared under such headings and in such manner as the Treasurer may approve or direct, and to be submitted to the Minister who, if he approves the estimates, shall cause them to be submitted to the Treasurer not later than a date specified by the Treasurer.

Accounts to be audited.

22. (1) The Corporation shall cause to be kept proper accounts and records of its transactions and affairs under such heads as the Treasurer may from time to time direct and shall do all things necessary to ensure that all payments out of moneys standing to the credit of the Small Business Development Corporation Account are correctly made and properly authorized and that adequate control is maintained over the assets of the Corporation and over the incurring of liabilities against that Account.

(2) The Corporation shall cause to be prepared in respect of each financial year ending on 30 June—

(a) a full, true and fair—

(i) balance sheet of its assets and liabilities; and

(ii) profit and loss statement;

and

(b) such other statements as the Treasurer may from time to time direct,

(5) The Auditor General has for the purposes of this Act all the powers conferred on him by the Audit Act 1904.

Annual
report of
the
Corporation.

23. (1) The Corporation shall as soon as is practicable after 1 July in each year, prepare and furnish to the Minister a report on its operations and proceedings for the year ending on 30 June last preceding.

(2) The Minister shall cause the report, together with copies of the financial statements of the Corporation and the report of the Auditor General thereon, to be laid before each House of Parliament as soon as practicable in each year after the receipt by him of all reports.

Regulations.

24. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

Review of
Act.

25. (1) The Minister shall carry out a review of the operation of this Act 5 years after the commencement of this Act and in the course of such review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of the Corporation;
- (b) the need for the continuation of the functions of the Corporation; and
- (c) such other matters as appear to him to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on his review of the Act and shall, as soon as practicable after the preparation thereof, cause the report to be laid before each House of Parliament.